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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/903,033	07/10/2001	Jeffrey Boulter	85804-019501 (01-9774)	9894

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EXAMINER

DENNISON, JERRY B

ART UNIT	PAPER NUMBER
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2143

MAIL DATE	DELIVERY MODE
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07/03/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/903,033	BOULTER ET AL.	
	Examiner	Art Unit	
	J. Bret Dennison	2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/25/07, 4/27/07</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Action is in response to Application Number 09/903,033 received on 10/25/2006.
2. Claims 1-42 are presented for examination.
3. The prosecution of this case has been transferred to another Examiner. All corresponding communications should be directed to Examiner's contact information, provided below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-42 are rejected under 35 U.S.C. 103(a) as obvious over TuneTo.com's Community-Based Internet Music Data Streaming System (see the following articles, cited herein, for detailed explanations of the TuneTo.com System:

Shands, Mark, "An Exclusive Interview with Michael Weiss, TuneTo.com", April 14, 2000

Bill Konig, "The College Music Journal names TuneTo.com, CMJ Website of the Week", 12 April 2000

Alvear, Jose, "Q&A with Tim Bratton, President of TuneTo.com", November 23, 1999

Mark Smotroff, "TuneTo.com Seals \$2.6 Million Series A Funding", January 18, 2000).

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4. Regarding claims 1-42, TuneTo.com provides a metacasting server that provides a combination of streaming with temporary caching for the purpose of streaming music (Shands, page 3), in which users vote on their favorite artist and then the system goes a little bit further to help them find the perfect channel playing music they like, as well as exposes them to new music that they would probably like and filters out music that they wouldn't like, all based on the preferences of the user (Shands, page 2). TuneTo.com provides a broadcast feature called the Preset Manager, which allows listeners to actually educate their Receivers as to which type of music, and which artists they like or dislike. Registered visitors are asked to rank up to five favorite genres, and then rate their feelings toward certain artists within a music style on a five point scale from "dislike" to "one of my favorites" (Konig, page 1). Tuneto.com then delivers highly targeted and highly focused channels based on a community, thereby being much more targeted, more tuned in to users' likes and dislikes (Alvear, page 2-3). TuneTo.com creates these community-based channels by gathering user preference information and then presenting to the listener, choices about channels that they might want to listen to based upon matching their profiles against other member's profiles, and then once you are part of one of the communities, users are exposed to new music in addition to the favorite bands they already said they like (Alvear, page 3). Therefore, as more and more users join the communities and continuously provide "thumbs up" and "thumbs down" feedback (Shands, page 5), the more accurate the profiles will be in terms of music selection, and the more accurate the system will get as to providing the specific music selection (including favorites as well as new music based on their profiles).

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TuneTo.com also is registered with the US Copyright office for digital transmission of music over the Internet in compliance with the Digital Millennium Copyright Act (Smotroff, page 2). The fact that TuneTo.com's music database is internet-based, there are no restrictions as to the location of the users. Therefore, it does not matter what country each member is located.

Therefore, the system of TuneTo.com disclosed a computer system and method for providing a data stream according to preferences of a community, comprising:

a server repeatedly receiving preferences of a first community having a plurality of members, said received preferences regarding data stream content of a first music-related database including songs and/or music videos (Alvear, page 3, Tuneto.com provides a server that provides community based channels);

said server repeatedly receiving preferences of a second community having a plurality of members, said second preferences regarding data stream content of said music-related database (Alvear, page 3, Tuneto.com provides a server that provides community based channels. This inherently includes multiple community-based channels, thereby including multiple communities);

said server evaluating said second preferences of said second community to provide evaluated second preferences (Alvear, page 3, TuneTo.com creates these community-based channels by gathering user preference information and then presenting to the listener, choices about channels that they might want to listen to based upon matching their profiles against other member's profiles);

said server repeatedly determining said first community from said second community by means of said evaluated second preferences with members of said first community having at least one preference in common (Konig, page 1);

said server repeatedly determining characteristics solely of said first community members' preferences with regard to said data stream content to provide determined characteristics (Shands, page 5, As more and more users join the communities and continuously provide "thumbs up" and "thumbs down" feedback);

said server biasing an individual data stream of said music-related database according to said determined characteristics, so that said individual data stream is biased according to said determined characteristics and so that said individual data stream is biased for positive preferences of said first community and biased against negative preferences of said first community (Alvear, page 3); and

said server transmitting said individual data stream on a voluntary or selectable basis thereby allowing an individual to receive said individual data stream on a voluntary or selectable basis so that said individual data stream continually has more content that said first community likes and less content that said first community dislikes without resort to analysis of said data stream content, and so that both said first community and said determined characteristics are permitted to change over time according to, respectively, said preferences of said second community and said preferences of said first community (Alvear, page 3).

The voting system of TuneTo.com also affects which new releases you will hear by matching the new music to fit your musical taste or preference (Shands, page 2).

The TuneTo.com system did not explicitly state selecting content for inclusion in an individual data stream according to said determined characteristics, said individual data stream being biased according to said first community members' preferences.

However, Shands disclosed that the new releases are affected by the voting system. Therefore, they must be added to a channel based on determined characteristics, i.e. a new release is added to a specific channel based on if the new release matches the type of music being played on that channel, with the type of music being the determined characteristic.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the channel is in fact being biased according to a communities members' preferences since the community is listening to the channel because it matches their characteristics, and new releases are selected to be added to that channel if they match those same characteristics, thereby exposing users to new music that they would probably like (Shands, page 2).

Response to Amendment

Applicant's arguments and amendments filed on 4/16/2007 have been carefully considered but they are not deemed fully persuasive. Applicant's arguments are deemed moot in view of the following new grounds of rejection as explained here below, necessitated by Applicant's substantial amendment (i.e., *by incorporating new limitations into the independent claims, which will require further search and consideration*) to the claims which significantly affected the scope thereof.

It is the Examiner's position that Applicant has not yet submitted claims drawn to limitations, which define the operation and apparatus of Applicant's disclosed invention in manner, which distinguishes over the prior art.

Failure for Applicant to significantly narrow definition/scope of the claims and supply arguments commensurate in scope with the claims implies the Applicant intends broad interpretation be given to the claims. The Examiner has interpreted the claims with scope parallel to the Applicant in the response and reiterates the need for the Applicant to more clearly and distinctly define the claimed invention.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 7,167,895 to Connelly disclosed choosing content based on ratings received from clients.

US 6,088,722 to Herz et al. disclosed choosing content based on characteristics related to the members.

Examiner's Note: Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing

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responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Bret Dennison whose telephone number is (571) 272-3910. The examiner can normally be reached on M-F 8:30am-5pm.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



J. B. D.
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